

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

IN RE: Herold Marcel Devis Debtor	Case No. 18-03273 RNO
WELLS FARGO BANK, N.A. Movant	Chapter 13
v. Herold Marcel Devis and Charles J. DeHart, III, Esquire Respondents	

MOTION FOR RELIEF FROM THE AUTOMATIC STAY

WELLS FARGO BANK, N.A. ("Movant") hereby moves this court, pursuant to 11 U.S.C. § 362, for relief from the automatic stay with respect to certain real property of the Debtor having an address of 1330 Glade Drive, AKA 2401 Glade Drive, Long Pond, PA 18334 (the "Property"), for all purposes allowed by the Note (defined below), the Mortgage (defined below), and applicable law, including but not limited to the right to foreclose. In further support of this Motion, Movant respectfully states:

1. A petition under Chapter 13 of the United States Bankruptcy Code was filed with respect to the Debtor on 8/3/2018.
2. Prior to the filing of the instant Chapter 13 Case, Movant initiated a Foreclosure proceeding which had reached the Sale stage at the time the bankruptcy was filed.
3. The Chapter 13 Plan was confirmed on 12/11/2018.
4. The Debtor has executed and delivered or is otherwise obligated with respect to that certain promissory note in the original principal amount of \$236,711.00 (the "Note"). A copy of the Note is attached hereto as **EXHIBIT A**. Movant is an entity entitled to enforce the Note.
5. Pursuant to that certain Mortgage dated 9/30/2010, and recorded in the office of the county clerk of Monroe County, Pennsylvania (the "Mortgage"), all obligations (collectively, the "Obligations") of the Debtor under and with respect to the Note and the Mortgage are secured by the Property. A copy of the Mortgage is attached hereto as **EXHIBIT B**.
6. All rights and remedies under the Mortgage have been assigned to the Movant pursuant to an assignment of mortgage. A copy of the Assignment of Mortgage is attached hereto as **EXHIBIT C**.
7. A copy of the Loan Modification recorded 10/17/2016 is attached hereto as **EXHIBIT D**.
8. Wells Fargo Bank, N.A. services the loan on the Property referenced in this Motion. In the event the automatic stay in this case is modified, this case dismisses, and/or the Debtor obtains a discharge and a foreclosure action is commenced on the mortgaged property, the foreclosure will be conducted in the name of Movant. Debtor executed a promissory note secured by a mortgage or deed of trust. The promissory note is either made payable to Creditor or has been duly indorsed. Creditor, directly or through an agent, has possession of the promissory note. Creditor is the original mortgagee or the beneficiary or assignee of the mortgage or deed of trust.
9. As of 9/12/2019, the outstanding amount of the Obligations less any partial payments or suspense balance is **\$257,703.79**.

10. The following chart sets forth the number and amount of post-petition payments due pursuant to the terms of the Note that have been missed by the debtor as of 9/12/2019.

# of Missed Pymts	From:	To:	Monthly Pymt Amt	Total Missed Pymts:
4	6/1/2019	9/1/2019	\$1,666.46	\$6,665.84
Less Post-Petition Partial Payments (Suspense Balance):				(\$0.00)
TOTAL:				\$6,665.84

11. As of 9/12/2019, the total post-petition arrearage/delinquency is **\$6,665.84**.
12. The estimated market value of the property is \$236,000.00. The basis for such valuation is Debtor's Schedule A/B, which is attached hereto as **EXHIBIT E**.
13. As of 9/19/2019, debtor is behind in payments to the Chapter 13 Trustee for a total of \$9,515.15. The total due to Movant post-petition from the date of filing through the 9/1/2019 payment is **\$21,643.02** (9/1/2018 – 12/1/2018 @ \$1,661.22 and 1/1/2019 – 9/1/2019 @ \$1,666.46). The Debtor's Amended Chapter 13 Plan added \$6,644.88 in post-petition payments to the Plan and the Chapter 13 trustee has disbursed a total of \$8,332.30 to Movant for post-petition payments leaving a total due of **\$6,665.84**.
14. Upon information and belief, the encumbrances on the property listed in the schedules or otherwise known, including but not limited to the encumbrances granted to Movant, listed in order of priority are: (I) Movant (**\$257,703.79**). There is no or inconsequential equity in the property.
15. The amount of the next monthly payment of the Debtor under the terms of the Note and Mortgage is \$1,666.46 and will come due on 10/1/2019.
16. Attached hereto is Local Bankruptcy Form 4001-1.
17. Cause exists for relief from the automatic stay for the following reasons:
- Movant's interest in the property is not adequately protected.
 - Post-confirmation payments required by the confirmed plan or proposed plan have not been made to Movant.
 - Pursuant to 11 U.S.C. § 362(d)(2)(A), Debtor has no equity in the Property; and pursuant to § 362(d)(2)(B), the Property is not necessary for an effective reorganization.

WHEREFORE, Movant prays that this Court issue an Order terminating or modifying the stay and granting the following:

- Relief from the stay for all purposes allowed by the Note, the Mortgage, and applicable law, including but not limited to allowing Movant (and any successors or assigns) to proceed under applicable non-bankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.
- That the Order be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code.
- That the 14 Day Stay described by Bankruptcy Rule 4001(a)(3) be waived.
- For such other relief as the Court deems proper.
- Movant further requests that upon entry of an order granting relief from stay, it be exempted from further compliance with Fed. Rule Bankr. P. 3002.1 in the instant bankruptcy case.

September 23, 2019

/s/ Amanda L. Rauer, Esquire

POWERS KIRN, LLC

Jill Manuel-Coughlin, Esquire; Atty ID # 63252

Harry B. Reese, Esquire; Atty ID #310501

Amanda L. Rauer, Esquire; Atty ID #307028

8 Neshaminy Interplex, Suite 215

Trevese, PA 19053

215-942-2090 phone; 215-942-8661 fax

bankruptcy@powerskirn.com

Attorney for Movant